TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 434

J. CONGDON SEABURY, AS RECEIVER OF THE CITY NATIONAL BANK OF SUMTER, S. C., PETITIONER,

vs.

BEATRICE C. GREEN, ADMINISTRATRIX D. B. N., C. T. A., OF THE ESTATE OF MOSES GREEN, DECEASED, ET AL.

ON WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS FOR SUMTER COUNTY OF THE STATE OF SOUTH CAROLINA.

PETITION FOR CERTIORARI FILED OCTOBER 1, 1934.

CERTIORARI GRANTED NOVEMBER 5, 1934.

SUPREME COURT OF THE UNITED STATES

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INDEX.

	Original	Print
Record from Court of Common Pleas of Sumter County	*a*	1
Clerk's certificate (omitted in printing)	*a*	
Statement of case	1	1
Complaint	2	2
Answer of Beatrice C. Green	4	4
Answer of infant defendants	6	6
Answer of Leon Green et al	7	7
Additional statement of fact	8	8
Will of Moses Green	9	9
Decree and opinion, Mann, J.	12	12
Exceptions	23	21
Notice of proposed case	25	23
Proceedings in Supreme Court of South Carolina	26	25
Opinion, Cothran, J., and judgment	26	25
Certificate as to order denying rehearing	30	33
Certificate as to order denying rehearing	30	31
Petition for stay of execution	31	32
Order staying execution	34	34
Clerk's certificate	37	35
Order allowing certiorari	40	39

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[fol. A] Clerk's Certificate to transcript omitted in printing.

[fol. 1]

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

Statement of Case

This is an action commenced in the Court of Common Pleas for Sumter County by a summons and complaint dated the — day of April, 1933, by the Receiver of the City National Bank of Sumter, S. C., brought under the direction of the Comptroller of the Currency and pursuant to the national banking laws of the United States and instituted for the purpose of enforcing the statutory liability on four (4) shares of stock of the par value of Four Hundred ($400) Dollars of the City National Bank of Sumter, S. C., an insolvent institution, standing in the names of the infant defendants.

The stock in question was originally owned by Moses Green, now deceased, and as hereinafter set forth, was delivered to the general guardian for the infant defendants and registered in the names of Helen Green, Herbert Green and Allen Green, who are, and were, infants when the said stock was transferred, as a part of the residuary estate of the decedent.

Among other questions, the appellants raise the question that the executor, under the will of Moses Green, deceased, had not performed his duties, in that he had delivered to the infants bank stock, under the residuary clause of the will, hereinafter set forth.

The plaintiff is the receiver of the bank in question, and the defendants are the administratrix d. b. n., c. t. a. of the estate of the original owner of the stock, and the devisees and legatees of such owner.

The case was tried before the Court, without a jury, upon the pleadings and upon an agreed statement of facts, and resulted in the rendition of a verdict and judgment in favor of the plaintiff, as hereinafter set forth. From the judgment so rendered, and which was duly docketed, notice of intention to appeal was duly given on behalf of the infant defendants herein.

All parties were properly brought before the circuit court, and the only question before the court related to the liability of the defendants upon the admitted facts.

[fol. 2] IN COURT OF COMMON PLEAS OF SUMTER COUNTY

COMPLAINT

The plaintiff above named, complaining of the defendants herein, alleges:

1. That, upon information and belief, Moses Green departed this life on or about the 17th day of March, 1927, leaving of force his last will and testament, which is of record in the Probate Court for Sumter County, wherein and whereunder Leon M. Green, as executor of said estate, duly qualified as such, entered upon the discharge of his duties, and has since been discharged.

2. That on or about April 15, 1933, Beatrice C. Green was duly appointed and has qualified as administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased, and is now active upon the discharge of her duties as such.

3. That, upon information and belief, the heirs at law and distributees of the estate of Moses Green, deceased, are Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, and Helen Green, Herbert Green and Allen Green, infant children of a pre-deceased son of the said Moses Green, to-wit: Harry Green.

4. That the City National Bank, of Sumter, S. C., a national banking association organized and existing under the Acts of Congress, at Sumter, S. C., and having fully issued capital stock of One hundred fifty thousand ($150,000.00) Dollars, divided into fifteen hundred (1500) shares of par value of One Hundred ($100.00) Dollars each, became insolvent on or about the 21st day of July, 1932, and its affairs were placed in the hands of the Comptroller of the Currency of the United States and the plaintiff, J. C. Seabury, was duly appointed and qualified as Receiver of said bank and is now active in the discharge of his duties as such.

5. That, due to the insufficiency of assets to pay the creditors of said insolvent bank, an assessment of One [fol. 3] Hundred ($100.00) Dollars per share of capital stock was subsequently ordered by the Comptroller of the Currency on or about August 26th, 1932, and the plaintiff, as Receiver, in pursuance of instructions of the Comptroller of the Currency, gave notice and made demand upon the shareholders of said insolvent bank, the defendants included in said notice and demand, requiring each shareholder to pay on or before October 3rd, 1932, the amount assessed on account of the shares of stock upon which said shareholders were individually liable.

6. That the said Moses Green was, prior to his death, a resident of the County of Sumter, said State, and his estate was duly administered upon in said County and State, and Beatrice C. Green has duly qualified as Administratrix D. B. N. C. T. A. in Sumter County.

7. That plaintiff is informed and believes that Leon H. Green, Alva I. Green, and Aaron H. Green are non-residents of the State of South Carolina, their exact whereabouts being unknown to plaintiff.

8. That plaintiff alleges upon information and belief that the said Leon H. Green, Alva I. Green and Aaron H. Green own certain real estate in Sumter County, said State.

9. That plaintiff is informed and believes that Ethel Green Blatt is a resident of Barnwell County, South Carolina, and that Beatrice C. Green, Helen Green, Herbert Green and Allen Green are residents of Florence County, said State.

10. That prior to his death the said Moses Green owned several shares of the capital stock of the said The City National Bank, and four shares of the said stock were transferred in the name of Helen Green, Herbert Green and Allen Green, who, plaintiff alleges on information and belief, are infants.

11. That notwithstanding the demand made upon the defendant Beatrice C. Green, as administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased, for the payment of the assessment upon the four shares of capital stock in The City National Bank of Sumter, S. C., for

[fol. 4] which assessment she is responsible as such, which assessment is now due, she has failed to pay the said assessment, or any part thereof, and this action is brought under the direction of the Comptroller of the Currency of the United States, and pursuant to the national banking laws of the United States, to enforce the defendant's liability thereon.

12. That the real and personal property in the hands of the defendants (other than the administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased) as heirs at law of the said Moses Green, deceased, is subject to the assessment as above set forth.

Wherefore, Plaintiff prays judgment:

1. Against the defendant Beatrice C. Green as administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased, in the sum of Four Hundred ($400.00) Dollars, together with interest thereon at the rate of seven per cent per annum from the 3rd day of October, 1932, and for the costs and disbursements of this action.

2. That any property now held by the defendants (other than the administratrix D. B. N. C. T. A. as aforesaid) as heirs at law of the said Moses Green, deceased, be subject to the payment of the indebtedness due as aforesaid.

Raymon Schwartz, Plaintiff's Attorney.

(Verified.)

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

ANSWER OF BEATRICE C. GREEN AS ADMINISTRATRIX D. B. N. C. T. A. AND AS GUARDIAN

The answer of Beatrice C. Green, as Administratrix D. B. N. C. T. A. of the Estate of Moses Green, deceased, and as Guardian for Helen Green, Herbert Green, and Allen Green, shows unto the Court:

I

That she admits the allegations of paragraphs 1, 2, 3, 6, and 7 of the complaint, and so much of paragraph 11 [fol. 5] thereof as alleges that demand has been made upon

her for the payment of the stock assessment in question, and that she has failed to pay the said assessment.

II

That she has no knowledge or information sufficient to form a belief with respect to the allegations of paragraphs 4 and 5 of the complaint, and therefore denies the same.

III

That she denies the allegations of paragraph 12 of the complaint.

IV

Further answering the complaint, she alleges that at the time of the death of the late Moses Green, and during the period that the estate of the said Moses Green was being administered, City National Bank continued in business, and, according to her information and belief, was throughout that time a solvent and going concern; that this condition continued until after the settlement of the estate of the said Moses Green, deceased; that a full accounting of the administration of the said estate was made by the executors of the will of the said decedent, and that upon such accounting, the said executors were duly discharged by the Probate Court of Sumter County; that at the time of the said accounting and discharge, according to the information and belief of this defendant, City National Bank was a going concern, and did not suspend business until long after the settlement of the said estate and the distribution of the assets thereof were effected; and this defendant is advised and believes and therefore alleges that neither the assets of the estate of Moses Green, deceased, nor the transferees of the four shares of stock described in paragraph 10 of the complaint, are liable for the extra statutory liability created under the laws of Congress; and that the said transferees of the said four shares of stock being minors at the time the transfer was made to them, and being still such, they are not personally liable for said extra statutory liability.

[fol. 6] V

Further answering the complaint, she denies that the said three children, Helen Green, Herbert Green, and Allen

Green, are or ever have been owners of the stock described in the complaint, and in that regard alleges that the stock transferred to them as alleged in the complaint was transferred without lawful authority, and that the said three minors, and this defendant as their guardian, had no legal capacity or right to accept the same, and that the said transfer represents an investment of funds of said infants to the extent of Four Hundred ($400.00) Dollars, in the said stock, and that the said investment was made without lawful authority, and is not binding upon the said infants.

Wherefore, the said defendant prays that as to her, in both of her aforesaid capacities, the complaint be dismissed, and that she be awarded her proper costs.

Samuel Want, Attorney for Answering Defendant.

Darlington, S. C., May 18th, 1933.

(Verified.)

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

ANSWER OF INFANT DEFENDANTS BY GUARDIAN AD LITEM

The answer of H. W. Hennig, as guardian ad litem for the infant defendants, Helen Green, Herbert Green, and Allen Green, shows unto the Court:

I

That by an order heretofore made in this cause, he was duly appointed guardian ad litem for Helen Green, Herbert Green, and Allen Green, to make and file the answer of the said defendants in this cause; that the said defendants are infants under the age of twenty-one years; that he has no knowledge or information sufficient to form a belief with [fol. 7] respect to any of the material allegations of the complaint, and therefore denies the same.

II

Further answering the complaint, he sets forth that he submits to the protection of the Court the interests of the said infant defendants, and on their behalf adopts as a part hereof the answer filed and served in this cause on behalf of Beatrice C. Green, Administratrix D. B. N. C. T. A. of

the estate of Moses Green, deceased, and as Guardian of Helen Green, Herbert Green, and Allen Green, in the belief that the same exonerates the infant defendants from all liability herein.

Wherefore, The said H. W. Hennig, as guardian ad litem for the infant defendants, Helen Green, Herbert Green, and Allen Green, prays that as to said defendants the complaint be dismissed with costs.

H. W. Hennig, Guardian ad Litem for Helen Green, Herbert Green, and Allen Green.

Darlington, S. C., May 31st, 1933.

(Verified.)

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

ANSWER OF LEON GREEN ET AL.

The defendants Leon M. Green, Alva I. Green, Aaron Green and Ethel Green Blatt, answering the Complaint of the plaintiff herein, allege:

For a First Defense:

That, upon information and belief, they deny that they are personally liable, or that the Estate of Moses Green is liable for any assessment for the four shares of stock transferred from the Estate of Moses Green to their co-defendants, Helen Green, Herbert Green, and Allen Green.

[fol. 8] For a Second Defense:

That if these answering defendants are liable for the payment of the said assessment as set forth in the Complaint, which, however, they expressly deny, that in equity they are entitled to have the lands and personal property now held and owned by the defendants, Helen Green, Herbert Green, and Allen Green, which they inherited from their grandfather, the late Moses Green, subjected to the payment of any judgment if obtained in this cause.

Wherefore, these defendants pray for such relief as may be just and equitable.

Solomon Blatt, Attorney for Answering Defendants.

(Verified.)

In Court of Common Pleas of Sumter County

Additional Statement of Fact

The Agreed Statement of Facts upon which this case was tried is incorporated in the opinion of the Circuit Judge. The following additional fact, taken from the records of the Probate Court in regard to the estate of the testator and the guardianship of the infant defendants, was discussed before the Circuit Judge:

The personal property of the testator included in the final distribution which embraced the stock now in question included other personal property of a value sufficient to have enabled the executors to make distribution to the three minors in question in cash, in an amount equal to the par value of the bank stock involved in this proceeding.

The aforesaid records further show that the accounting made by the executors of the testatbr's will was an ex parte proceeding, but pursuant thereto the executor applied for a discharge, which notice for application was duly published in a newspaper for said County, having a general circulation, and the general guardian of the infant defendants made no objection to the discharge of the executor.

When the estate was finally settled and the same distributed amongst the devisees and legatees under the will, [fol. 9] the infant defendants' share, including the bank stock in question, was received by and receipted for by Beatrice C. Green, mother of and general guardian for the infant defendants, who accepted the same on behalf of the infant defendants, including the four (4) shares of stock in question and thereafter received the dividends arising therefrom and accounted to the Court therefor, as a part of the maintenance and support of the infant defendants.

The value of the personal property delivered to the infants and to their duly appointed general guardian under the residuary clause of the Last Will and Testament of Moses Green was equal in value to an amount far in excess of the value of the four shares of stock which is the subject of the litigation herein.

Will of Moses Green

State of South Carolina,
County of Sumter:

In the Name of God, Amen!

I, Moses Green, of the County of Sumter, said State, being of sound and disposing mind, memory and understanding, and being mindful of the very great uncertainty of life and of the certainty of death, do hereby make, ordain, publish and declare this to be my last will and testament, hereby expressly revoking all other wills by me heretofore made.

Item One: It is my will, and I so direct that my executor hereinafter named shall pay all just debts duly established and proven against my estate as soon after my demise as it is possible for him to do so.

Item Two: I give, devise and bequeath unto my beloved daughter, Ethel Green Blatt, those two store buildings on East Liberty Street, in the City of Sumter, S. C., being described and designated as numbers sixteen and eighteen, to her, her heirs and assigns forever. In devising unto her these two stores, it is my desire, but not mandatory upon [fol. 10] her, that she retain title to the same and use the income in rents therefrom as her personal wants and needs may warrant. And I further give, devise and bequeath unto my said daughter, Ethel Green Blatt, all of the furniture, fixtures, silverware, chinaware, and all other household goods of every nature, kind or description in my residence contained at the time of my death.

Item Three: I give, devise and bequeath unto the three children of my eldest and beloved son, Harry Green, namely: Helen Green, Herbert Green and Allen Green, in equal shares and proportions, all of that piece, parcel or lot of land in the City and County of Sumter, said State, measuring eighty-five (85) feet on West Hampton Avenue of said City, and running back with an uniform width to a depth of one hundred and ninety-six (196) feet, the said lot being a part of my home place, being the Western portion thereof.

Item Four: It is my will, and I so direct, that the watch which I now wear, formerly belonging to my dear son, Hubert Green, shall be given to my beloved grandson, Solomon Blatt, Jr.

Item Five: Realizing the enormous importance of education for success in life, and desiring that my grandchildren shall be given the equal advantages that I endeavored to give to my own children, it is my will, and I direct that my executor hereinafter named shall invest, in safe interest bearing securities the sum of Two Thousand ($2,000.00) dollars for each of my grandchildren living at the time of my death, this money to be available for educational purposes to each grandchild as soon as he or she enters college, each of my said grandchildren to have available for educational purposes the sum of Two Thousand ($2,000.00) dollars, and the profits arising from the investment of said fund in securities as aforesaid; but in the event that any of my said grandchildren shall not avail themselves, on account of death, or otherwise, of the use and benefits of the moneys herein provided for educational purposes, then the [fol. 11] sum herein provided therefor, or the unused portion thereof to revert to my estate.'

Item Six: For the reason that I do not desire to indefinitely tie up my estate, I am not herein making provisions for the education of any grandchildren that may be born after my death; but, God having blessed me with good fortune, I am leaving to each of my children a sufficient amount of property and money to get them established in this world, and I desire to enjoin them to in nowise neglect the full and complete education of their children, and it is my will and desire and fondest hope that each of my children shall give their children every educational advantage possible.

Item Seven: It is my will, and I so direct, that my heirs designated in this will and referred to specifically in the residuary clause hereof shall have the right to determine the course that my executor shall pursue in regard to the business that I have worked so hard for so many years to establish. The determination shall be arrived at by a majority vote of my heirs, each one of my surviving children being entitled to one vote, and the legal representative of the children of my deceased son, Harry, to one vote. In the event of the sale of the business, or in the event of the continuance thereof, the proceeds or profits shall be divided amongst my heirs as is more particularly set out in the residuary clause of this my will. In the event of the continuance of the business only the profits arising therefrom

are to be divided, and this is to be done annually from the date that my executor takes charge, and at the end of each fiscal year thereafter my executor shall have the right, by the same method as above set forth, to determine the disposition of the business.

Item Eight: I give, devise and bequeath unto the Trustees of Congregation Sinai located in the City of Sumter, S. C., and to their successors in office, the sum of four hundred dollars to be held by them in trust for the purpose of investing the principal and paying out of the income thereof so [fol. 12] much thereof as may be necessary to provide permanent, perpetual, and proper care of the graves in my plot in the Jewish Cemetery in the City of Sumter, S. C.

Item Nine: All the rest and residue of my estate, real, personal or mixed, of which I may be possessed or entitled to at the time of my death, shall be divided as follows: One-fifth thereof to the children of my deceased son, Harry, namely: Helen, Herbert and Allen; and one-fifth thereof to each of my beloved children, Leon M. Green, Alva I. Green, Ethel Green Blatt, and Aaron Green, share and share alike, the child or children of a predeceased child to take and have that portion to which its parent would have been entitled if living; but in the distribution and division of my estate the store building in which my present business is now being conducted shall not be divided among my respective heirs until the business is discontinued.

Item Ten: I hereby nominate and appoint my beloved son, Leon M. Green, executor of this my last will and testament, and I charge him with the responsibility of carrying out strictly the provisions of this my said last will and testament, and I enjoin him, in the event that my heirs determine to continue my business, to faithfully and zealously maintain the same in a prosperous and flourishing condition for his benefit and for the benefit of my other heirs.

Witness my hand and seal on this the 23rd day of April, A. D. 1925.

Moses Green (L. S.)

(Duly Witnessed.)

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

DECREE

The plaintiff, J. C. Seabury, as the duly appointed and qualified Receiver of The City National Bank, a national banking association, brings this suit against the defendants upon a stock liability on four shares of stock standing in [fol. 13] the names of Helen Green, Herbert Green and Allen Green, infants.

The complaint alleges that Moses Green, late of the County of Sumter, departed this life on or about the 17th day of March, 1927, leaving of force his last Will and Testament, filed in the office of the Judge of Probate for Sumter County.

That under and by virtue of the said Will, Leon M. Green was named as executor and as such entered upon the discharge of his duties and thereafter, was duly discharged as executor of the said estate.

That thereafter, to-wit, on August 26th, 1932, the Comptroller of the Currency of the United States levied a stock assessment of one hundred per cent upon all shares of stock owned by the stockholders of the said bank. That the estate of Moses Green having been settled prior to the levy so made by the Comptroller, that upon a petition to the Probate Court for Sumter County, Mrs. Beatrice C. Green was duly appointed and qualified as administratrix D.B.N.-C.T.A. of the estate of Moses Green, deceased.

That the devisees and legatees of the said Moses Green were Leon M. Green, Alva I. Green, Aaron H. Green and Ethel Green Blatt, adult children of the said Moses Green, and Helen Green, Herbert Green and Allen Green, the children of a predeceased son of the said Moses Green. That pursuant to the terms of the said Will, four shares of stock were transferred in the names of the said Helen Green, Herbert Green and Allen Green, infant grandchildren of the said Moses Green. That this suit was brought by reason of the stock assessment so ordered by the Comptroller and under his directions and under the national banking laws pursuant thereto.

And the plaintiff demands judgment against the administratrix D. B. N. C. T. A., of the estate of Moses Green, deceased, for the indebtedness due by reason of the stock assessment so levied by the Comptroller, and against all of

the defendants that the lands or personal property taken by [fol. 14] them, under the terms of the will of Moses Green, deceased, be subjected to the payment of the said stock assessment.

Mrs. Beatrice C. Green is the duly appointed and general guardian for her infant children, Helen Green, Herbert Green and Allen Green, and she was made a party to this suit.

* * * * * * *

The Answer of the administratrix D. B. N. C. T. A. and of Mrs. Beatrice C. Green, as guardian for Helen Green, Herbert Green and Allen Green, admitted that she had failed and refused to pay the said assessment.

The Answer denied the formal parts of the complaint relating to the insolvency of the Bank and the stock assessment having been levied. However, these questions were not raised before me as the case was submitted to me upon an Agreed Statement of Facts hereinafter set forth.

The Answer of the said administratrix D. B. N. C. T. A. and as guardian alleged that during the administration of the said estate by the executor and for several years thereafter, the City National Bank was a going concern and that the executor made a full accounting of the administration of the estate of the decedent and upon such accounting the executor was duly discharged by the Probate Court for Sumter County, and therefore the answering defendant in both capacities denied liability upon the said stock.

Further answering, the defendant denied that Helen Green, Herbert Green and Allen Green, being minors, were ever the owners of the four shares of stock and therefore denied liability thereon.

* * * * * * *

Answer of the duly appointed Guardian ad Litem, for the infant defendants, was formal, submitting their rights to the protection of the Court and raised no special defense.

* * * * * * *

The Answer of the adult heirs denied, first, that the estate of Moses Green was liable for the said stock assessment, and second, that the property which they took respectively as devisees and legatees of the estate of Moses Green,

[fol. 15] deceased, should not be subjected to the payment of the stock assessment.

As an affirmative defense against their co-defendants, Beatrice C. Green as guardian for her infant children, Helen Green, Herbert Green and Allen Green, and against the infant children, Helen Green, Herbert Green and Allen Green, that should it be held that their estate so inherited from their deceased father should be liable for the payment of the said stock assessment (which they specifically deny), then in equity the Court should order that the estate, taken by the said infant defendants as devisees and legatees of the said Moses Green, deceased, should first be subjected to the payment of the said liability before they, the adult heirs, should be called upon to contribute out of their separate estates as devisees and legatees of their late father.

* * * * * * *

The case was submitted to me upon an Agreed Statement of Facts as follows:

1. It is agreed that this case should be tried before Judge Mann at Sumter without a jury.

2. It is further agreed that the late Moses Green, a citizen of Sumter County, South Carolina, departed this life on or about the 17th day of March, 1927, leaving of force his last will and testament, which was duly filed for probate in the office of the Judge of Probate for Sumter County, whereunder Leon M. Green, the named executor, duly qualified and entered upon the discharge of his duties.

3. That Beatrice C. Green was, on or about April 15, 1933, duly appointed and qualified as administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased, and is now engaged upon the discharge of her duties as such.

4. That the heirs and distributees at law of the estate of Moses Green, deceased, are Leon M. Green, A. I. Green, A. H. Green, E. G. Blatt, and Helen, Herbert, and Allen Green, the last three being infant children of a predeceased son of the said Moses Green, to-wit, Harry Green. And [fol. 16] that Beatrice C. Green is the duly appointed and qualified general guardian of the said three infant children named.

5. That the City National Bank of Sumter, a national banking association, had a capital stock of $150,000.00, divided into 1,500 shares of $100.00 each, and that the said Bank became insolvent on or about the 21st day of July, 1932, and its affairs were placed in the hands of J. C. Seabury, the duly appointed and qualified Receiver of the said Bank.

6. That there was an insufficiency of assets to pay the creditors of said insolvent Bank, and an assessment of $100.00 per share on the capital stock was ordered by the Comptroller on August 26, 1932, and the Receiver gave due notice thereof and demanded payment of the stockholders, which said payment was to be made on or before October 2, 1932. That after the appointment of Beatrice C. Green as administratrix D. B. N. C. T. A. of the estate of Moses Green, deceased, that demand was made upon the said administratrix for the payment of the stock assessment upon four shares of stock standing in the names of Helen, Herbert and Allen Green, infant defendants herein. That the said administratrix has failed and refused to pay the same.

7. That L. H. Green, A. I. Green and A. H. Green are non-residents of the State of South Carolina. Certain real estate of theirs, respectively, has been attached in this proceeding.

8. That included among the assets of the estate of the late Moses Green, deceased, were a number of shares of bank stock in the said City National Bank of Sumter, S. C., which said stock constituted part of the residuary estate of the testator, and was distributed by the executor under the terms of the residuary clause of the will, four shares of said stock being transferred to the three infants named herein, the same appearing on the books of the said bank while it was a going concern. That at the same time there was [fol. 17] transferred on the books of the bank to the adult heirs named herein their prorata number of said shares of stock under the provisions of the will.

9. That the executor has been duly discharged, and at the time of the said transfer of stock the said bank was a going concern, and no demand was made upon the executor for the payment of any bank stock liability.

10. That the adult heirs of the said Moses Green, deceased, have paid their respective stockholders liability upon the shares of stock standing in their names respectively, arising by reason of the insolvency of the said City National Bank of Sumter. And although due demand has been made, neither the infant defendants, the administratrix D. B. N. C. T. A., nor the adult heirs have paid the stockholders liability referred to in the Complaint, and the said assessment still remains open and unpaid.

11. That there remains in Sumter County real estate undivided, in which all of the heirs have an interest, of a value far in excess of the total amount of bank stock divided among the heirs, and the value of the infants' interest in said real estate far exceeds the face amount of the bank stock appearing in their names on the books of the bank.

12. That this suit is brought by the plaintiff, as the duly appointed Receiver of the City National Bank of Sumter, S. C., after a stock assessment was levied by the Comptroller of the Currency of the United States, the said suit being brought under the direction of the Comptroller of the Currency of the United States and pursuant to and under the national banking laws of the United States to enforce the liability upon the said four shares of stock.

* * * * * * *

As a stipulation, counsel representing all of the parties to this suit agreed as follows: All parties agreed without notice to either or any of the others, that either or any may use any and all of the records pertaining to, first, the Estate of Moses Green, deceased, whereby and whereunder, [fol. 18] Leon M. Green was executor thereof; second, the guardianship proceedings had in connection with the estates of Helen, Herbert and Allen Green, infants; third, the administration of the estate of Moses Green, deceased, whereby Beatrice C. Green was appointed administratrix D. B. N. C. T. A., of said estate; all of said papers and proceedings being on file in the office of the Judge of Probate for Sumter County.

* * * * * * *

Questions in this case were exhaustively argued by the attorneys representing the respective parties. Samuel Want, Esquire, representing the administratrix, the gen-

eral guardian for the infant defendants, and the infant defendants, raised the question that the executor, under the will of Moses Green, deceased, had not performed his duties in that he delivered to the infants bank stock, with constructive knowledge that they could not assume liability thereon, and, therefore the transfer was null and void.

By virtue of the residuary clause of the Will of Moses Green, deceased, under which the stock was transferred, the testator devised all of his property, real and personal, to his four living children and to the infant defendants in this case, the children of his predeceased son, Harry Green, *each to take an undivided one-fifth thereof.* From the record it appears that the executor carried out the exact terms of the provision of the said Will and divided the estate in kind, each taking one-fifth thereof in the personal property and the defendants held as tenants in common (other than Beatrice C. Green, as guardian and as administratrix aforesaid) the real estate of the testator, in the same proportions.

I find, therefore, as a matter of fact, that the executor was not derelict in his duty in transferring the stock to the infant defendants, but that he specifically carried out the terms of his Father's Will and such conduct on his part in his final accounting to the Probate Court was ratified and confirmed.

Under the authority of Rutledge v. Stackley et al., 162 S. C., page 170, there can be no doubt that a personal judg-[fol. 19] ment against infants upon a stock assessment liability cannot be enforced against them personally, that is a personal judgment cannot be obtained against them for bank stock standing in their names in the event that an assessment is levied. The assumption of such liability is voidable and as the Court said in this case, "The transferees, being minors, were without legal capacity to assume the obligation. Upon coming of age they would have an election either to affirm or avoid the entire transaction. In the meantime the transfer of the stock, having resulted to their disadvantage, the law will avoid it for them."

And in the same case the Court uses this language, "We do not intend by this decision to hold that, where bank stock appears in the name of a minor, there is no redress for depositors. That conclusion does not follow."

Where then should the liability rest?

It was held in the case of Aldrich v. Bingham (D. C. N. Y., 1904) 131 F. 363, a transfer of stock in a national bank, while it was a going concern, to the stockholder's infant children, under five years of age, not legally liable to assume all the obligations of stockholders, did not relieve the father from his liability for assessments levied on the stock so transferred after the bank's insolvency.

It was held in Foster v. Wilson, 75 Fed. 797: A father buying stock in the names of his minor children becomes himself liable to assessment as a shareholder; and the assent of a minor after becoming of age, after the assessment but before suit is brought, does not relieve the father from liability.

And in the case of Early v. Richardson, 280 U. S., 496, the Court held where a father purchased stock and had the same transferred in the names of his infant children, that he thereby assumed the responsibility in the event an assessment was thereafter levied.

From the authorities above cited it would appear that if the testator, during his lifetime had transferred the stock to his infant grandchildren, and had survived to this day, [fol. 20] that he would be liable for the assessment so levied by the Comptroller.

It appears to me, therefore, that the administratrix D. B. N. C. T. A., who is the legal representative of the testator would stand in his shoes, for as was stated in the case of Smith v. Byers, 102 S. C., 218, "In fact he (the executor) was the testator (Henry Clark) in possession and he could not claim any rights inconsistent with his duty."

It therefore follows, that if the testator were living he would be responsible for the assessment, so far as the four shares, which were placed in the names of his infant grandchildren, are concerned.

The Court having avoided the contract for the infants, the stock is as though the same had never been transferred from the estate of the testator, Moses Green, and the administratrix D. B. N. C. T. A., being in fact the testator under the authority of Smith v. Byers, supra, is the owner of the said four shares of stock.

The estate of Moses Green, in contemplation of law, being liable for the four shares of stock, the administratrix D. B. N. C. T. A., is liable for the assessment under the

case of Matteson v. Dent, 176 U. S., 521, holding, "That a shareholder's liability (upon bank stock) continues after his death until there is a transfer of his stock upon the books of the bank * * * notwithstanding the stockholder died and his estate was distributed and settled prior to the insolvency of the bank, the estate is still liable in the absence of such transfer of stock, and the estate may be followed in the hands of the distributees and legatees * * * and the whole amount of the assessment enforced to the extent of the distributive share received."

There can be no difference in the liability of the estate of Moses Green to answer for the stock assessment so levied by the Comptroller upon the stock transferred to the infants in this action, even though the assessment was made after the testator dies and the executor discharged.

Under this section the estate of a deceased shareholder in a national bank is liable on the stock held by it, though [fol. 21] insolvency of the bank occurs and assessment on the policy is made after his death. Miller v. Hammer (C. C. A. Del, 1920), 269 F. 891, reversing Hammer v. Miller (D. C., 1920), 263 F. 965.

And this doctrine is the law of this State as enunciated by our Supreme Court in the case of McNair v. Howle, 123 S. C., page 252, holding in brief that the administrator D. B. N., was a proper and necessary party to a suit upon a contract of the intestate; and that the heirs at law of the intestate were proper parties to subject the intestate's lands, which they inherited as his heirs at law, to the payment of his, the intestate's, obligations. This rule has been affirmed in the case of Arnett v. The Columbia Theological Seminary, 168 S. C., page 272.

Under these last two mentioned authorities it would appear that the lands held by the devisees of Moses Green, deceased, is subject to the indebtedness due by his estate upon the four shares of stock standing in the names of his infant grandchildren.

From the undisputed testimony it is admitted, and I so find, that the infant defendants received under the Will of their late grandfather, real and personal property far in excess of the assessment levied by the Comptroller, which personal property is now held by their Mother as their duly appointed guardian, and which real estate they own as tenants in common with the other named defendants in

this action (other than Beatrice C. Green, administratrix D. B. N. C. T. A., and as guardian for her children). It is admitted that the bank stock of the City National Bank, owned by the testator was divided in kind into five equal parts, in accordance with the residuary clause of the said Will, and that each of the adults to this action (except the administratrix aforesaid and guardian) received from the executor and there was transferred upon the books of the bank to each of them, respectively, the same number of shares as was transferred to the infant defendants jointly in this action, upon which the adults to this action, who had [fol. 22] not theretofore disposed of their stock, have already paid their respective stock assessments.

It, therefore, appears to me that in equity and good conscience, before the real and personal property of Leon M. Green, Alva I. Green, Aaron H. Green and Mrs. Ethel Green Blatt, which they took and hold now as devisees and legatees, respectively, of Moses Green, deceased, be subjected to the payment of the stock assessment upon the four shares of stock standing in the names of the infant defendants, that the real and personal property of the infant defendants which they own, or which is held for them by their guardian, which they took as devisees and legatees under the Will of the late Moses Green, should first be exhausted.

This equitable doctrine, which I have invoked in this case is sustained and enunciated in 7 C. J., page 770, holding, "That a minor does not have the necessary legal capacity to become a stockholder in a national bank, and is not personally liable for the assessments on stock standing in his name, or in the name of a Guardian, *although it seems that where the stock is left by Will or descends to the minor the estate in the hands of a guardian is liable* for the assessment." This doctrine has been recognized as the law in the case of Clark v. Ogilvil, 111 Ky., 181, 63 S. W., 429. See also U. S. Ann. Code, Title 12, Section 10, page 127.

It is therefore ordered, adjudged and decreed, That the plaintiff, J. C. Seabury, as Receiver of The City National Bank of Sumter, S. C., a national banking association, have judgment against Beatrice C. Green, as administratrix D. B. N. C. T. A., of the estate of Moses Green, deceased, in the sum of Four Hundred Dollars (400.00) with interest thereon from October 3rd, 1932, at the rate of seven per

cent per annum, and for the costs and disbursements of this action.

It is further ordered, adjudged and decreed, That real and personal property of the defendants, Helen Green, [fol. 23] Herbert Green and Allen Green, which they took as devisees and legatees of Moses Green, deceased (whether such property now stands in their names respectively, or in the name of their duly appointed and qualified guardian) be first subjected to the payment of the judgment hereinabove ordered in favor of the said J. C. Seabury, as Receiver against Beatrice C. Green, as administratrix D. B. N. C. T. A., of the estate of Moses Green, deceased.

It is further ordered, adjudged and decreed, That in the event that the real and personal property owned by the said Helen Green, Herbert Green and Allen Green, which they took as devisees and legatees under the Will of their late Grandfather, Moses Green, whether such real or personal property stands in their names, respectively, or in the name of their guardian, be insufficient to pay the said stock assessment, then and in that event the real and personal property of the said Leon M. Green, Alva I. Green, Aaron H. Green and Mrs. Ethel Green Blatt, as devisees and legatees of Moses Green, deceased, shall be subjected to the payment of the judgment hereinabove ordered in favor of the said J. C. Seabury, as Receiver aforesaid against Beatrice C. Green, as administratrix D. B. N. C. T. A., of the estate of Moses Green, deceased.

M. M. Mann, Presiding Judge.

Nov. 28, 1933.

IN COURT OF COMMON PLEAS OF SUMTER COUNTY

EXCEPTIONS

I

It is respectfully submitted that the Circuit Judge erred in holding that under the residuary clause of the will in question it was incumbent upon the executor to so distribute the residuary estate as to deliver to the infant appellants, in kind, the four shares of bank stock involved in this cause.

[fol. 24] II

It is respectfully submitted that the Circuit Judge erred in holding that the executor of the testator's will had the right and/or duty to transfer to the infant appellants, as a specific legacy or legacy in kind, the four shares of bank stock involved therein.

III

It is respectfully submitted that the Circuit Judge erred in holding that the approval by the Probate Court of Sumter County of the final account of the executor of the testator's will, showing the distribution in kind to the infant appellants of the bank stock in question, constituted a ratification and confirmation of the action of the executors.

IV

It is respectfully submitted that the Circuit Judge erred in holding that under the agreed facts in this case, the administratrix d. b. n., c. t. a. of the testator's estate stands in the shoes of the testator, and is subject to judgment, to be enforced against the estate of the testator in the hands of his legatees and devisees, for the extra constitutional and statutory liability attached to the bank stock in question.

V

It is respectfully submitted that the Circuit Judge erred in holding that the real and personal property of the infant appellants, which they took as devisees and legatees of the testator, may be impounded and sold for the satisfaction of the claim of the plaintiff herein.

VI

It is respectfully submitted that the Circuit Judge erred in holding in effect that the infant appellants may be held liable for the payment of the claim set forth in the complaint in this cause.

[fol. 25] In Court of Common Pleas of Sumter County

Notice of Proposed Case

To Raymon Schwartz, Esq., Attorney for the Plaintiff, and to George D. Levy, Esq., and Solomon Blatt, Esq., Attorneys for Certain Defendants:

You will please take notice, That the defendant, Beatrice C. Green, as Administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased, and as Guardian of Helen Green, Herbert Green, and Allen Green, and H. W. Hennig, as Guardian ad Litem for the infant defendants Helen Green, Herbert Green, and Allen Green, propose the foregoing as the Case and Exceptions upon which, when printed and filed as required by law, this case shall be heard in the Supreme Court.

Samuel Want, Attorney for Appellants.

Darlington, S. C., January 6th, 1934.

Case for appeal settled by agreement of counsel.

[fol. 1] THE STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

J. C. SEABURY, as Receiver of the City National Bank of Sumter S. C., a National Banking Association, Respondent,

against

BEATRICE C. GREEN, Administratrix D. B. N., C. T. A. of the Estate of Moses Green, Deceased; Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, Beatrice C. Green, as Guardian for Helen Green, Herbert Green and Allen Green, and Helen Green, Herbert Green and Allen Green, Defendants

In re BEATRICE C. GREEN, Administratrix D. B. N., C. T. A. of the Estate of Moses Green, Deceased; Beatrice C. Green as Guardian for Helen Green, Herbert Green, and Allen Green, and H. W. Hennig as Guardian ad Litem for Helen Green, Herbert Green and Allen Green, Appellants

Appeal from Sumter County. M. M. Mann, Judge

Case No. 703

Opinion No. 13880

Filed June 26, 1934

Reversed.

Samuel Want, of Darlington, for appellants.
Raymon Schwartz, of Sumter, for respondent.
George D. Levy, of Sumter, and Solomon Blatt, of Barnwell, for certain interested defendants.

W. C. COTHRAN, AAJ.:

Moses Green, late of the County of Sumter, departed this life on or about March 17, 1927. Being the owner of considerable property and desiring to make disposition of same, he left a will with full directions therefor to his son, Leon M. Green, as executor. The heirs of the testator and distributees under his will were three sons, one daughter

and three grandchildren, the latter the children of a deceased son.

Under the terms of the will several direct devises and bequests were made, the residuary clause appearing in Item 9. By the terms of this Item it was provided that all the rest and residue of his estate, consisting of real, personal and mixed property, should be divided one-fifth to the three children of his deceased son and one-fifth to each of his four children, they being of age. Included in the rest and residue of his property directed to be divided under this Item was a considerable amount of both real and personal property and in the personal property were twenty shares of stock of the City National Bank of Sumter. In [fol. 2] carrying out the directions in the will, the executor divided the bank stock into five portions, giving to the four adult children four shares each and allotting to the three grandchildren a like number of shares. New certificates of stock were issued from the books of the bank to the new owners, a certificate for four shares being issued to Helen, Herbert and Allen Green, the three grandchildren.

Beatrice C. Green was duly appointed the general guardian for these minor grandchildren and the certificate for four shares of the bank stock was delivered to her as such general guardian, although the certificate was issued in the names of the three children. The bank stock appeared to be a good investment, dividends upon same being collected by the guardian and used for the support and maintenance of the children.

Leon M. Green duly attended to his duties as executor, rendered his final accounting and was discharged. The exact date of his discharge is not shown but it is alleged and not denied that the discharge took place several years before the failure of the City National Bank and when the bank was apparently in a sound financial condition.

On July 21, 1932, more than five years after the death of Moses Green the City National Bank of Sumter was declared insolvent and its doors were closed. Demand was made upon the stockholders, as appeared from the stock book of the bank as of the date of closing, for their statutory liability and Beatrice C. Green, as guardian, was asked to pay the sum of $400.00, this being $100.00 per share on the four shares of stock issued to the children, the par value of the stock being $100.00 per share. The guardian refused

to make payment and thereafter she, Beatrice C. Green, was duly appointed administratrix debonis non, cum testamentum annexo, of the estate. All reference to her hereinafter will be considered as administratrix in that capacity.

Upon her appointment as administratrix, which appointment was solely for the purpose of a suit to follow, all assets of the estate having long since been distributed, the receiver brought this suit during the month of April, 1933. All of the heirs at law were made parties defendant as was Beatrice C. Green, as administratrix and guardian. The minor defendants, the three grandchildren, were represented by H. W. Hennig as their guardian ad litem. The object of the suit was to obtain judgment against the administratrix for $400.00 and interest upon the stock liability and to subject any property held by the heirs of Moses Green to the payment of the judgment if, and when, obtained. All of the Defendants filed answers to the complaint, the minors being duly represented by their guardian ad litem who filed an answer for them. Upon the pleadings as filed and upon an agreed stipulation of facts the cause was submitted to the Circuit Judge for determination, no jury being requested by any of the parties.

The decree of the Circuit Judge was in favor of the Plaintiff and from the judgment, as rendered, the defendants, Beatrice C. Green, as administratrix and as guardian for the three minor defendants, and H. W. Hennig, as guardian ad litem for said minor defendants, have prosecuted this appeal. The other defendants did not appeal.

The decree of the Circuit Judge, following the case of Rutledge v. Stackley, 162 S. C. 170, held that no personal judgment could be enforced against the three minor children by reason of the stock standing in their names. Assuming that there must be a liability somewhere the Circuit Judge then asks himself the question, "where, then, should the liability rest?" Answering his own question with the premise that if the testator were living he would be responsible for the four shares of stock which were placed in the names of the minor grandchildren, he holds that the stock is as though it had never been transferred from the estate of the testator and that the administratrix is the [fol. 3] owner of the four shares of stock. Finding from the agreed statement of facts that the minor defendants received under the will real and personal property far in

excess of the stock liability, which personal property is held by their guardian the real estate being held as tenants in common with the other heirs, the Circuit Judge then holds that all of the estate of Moses Green is liable for the stock assessment but that the property give- to the minor children should be first exhausted before recourse can be had against the property of the other beneficiaries.

In holding that the estate of Moses Green is, in contemplation of law, liable for the four shares of stock and that the administratrix is liable for the stock assessment, the Court cites the following extract from the case of Matteson v. Dent, 176 U. S. 521:

"That a shareholder's liability (upon bank stock) continues after his death *until there is a transfer of his stock upon the books of the bank* • • • notwithstanding the stockholder died and his estate was distributed and settled prior to the insolvency of the bank, the estate is still liable *in the absence of such transfer of stock,* and the estate may be followed in the hands of the distributees and legatees • • • and the whole amount of the assessment enforced to the extent of the distributive share received." (Italics supplied.)

We must express our inability to follow the reasoning of the Circuit Judge in this portion of his decree nor do we think the above citation is authority for his position.

After holding that the minor children are not liable for the stock assessment he proceeds to impress their property with liability for the judgment. "There may be a slight legal distinction between the two," as remarked by one of the old-time Judges of this State under a rather different state of facts, "but the sensation is very much the same."

We cannot see how the interests of the minors can be held solely responsible for the judgment rendered and must disagree with the Circuit Judge in so holding. See the case of Conner v. McSween, 164 S. C. 438. But another feature of the case here presents itself and that is, is the estate of Moses Green liable?

The cases in this State upon this subject are all of a different nature from the present one. By referring to some of these we find:

Conner v. McSween, supra. In this case there is a full discussion of the subject and a citation of the leading au-

thorities. The Defendant in this case made a voluntary transfer of three hundred shares of bank stock to a trustee for the benefit of his three minor children and the new certificate was issued in the name of the trustee. About eighteen months thereafter the bank closed and in a suit to recover the statutory liability against the Defendant, the transferror of said stock, this Court held him liable. The Circuit Judge had exonerated the Defendant relying largely upon the opinion in

Loomis v. Verenes, 141 S. C. 145. In that case two brothers had transferred certain bank stock to the wife of one of the brothers. The bank failed in about eighteen months thereafter and in a suit against the brothers for stock liability the Court held that they were not liable. The very important distinction was made that in the McSween case the transfer was made to minors and in the Loomis case the transfer was made to a person sui juris with no notice of the bank's insolvency and with no purpose to evade statutory liability.

Rutledge v. Stackley, supra, holds that the estates of minors in the hands of trustees cannot be held liable for the stock liability. This is on the ground, as held in Fischer v. Chisolm, 159 S. C. 395, that the liability is contractual in its nature and that minors cannot assume the contract. See [fol. 4] also Early v. Richardson, 280 U. S. 496. If the estate of the minors in the hands of a trustee could not be made liable for a claim of stock liability no more could such estate be made liable if in the hands of a guardian.

No one of these cases exactly fits the facts in the present case. Moses Green did not make the transfer to his minor grandchildren. They took the stock as allotted to them by the executor in making a division of the estate under the residuary clause contained in the will. The instructions for division of the residuary estate into five parts nowhere said that the grandchildren should receive any portion of the bank stock. This allotment to the grandchildren was solely a matter transacted by the executor in what he considered the orderly and authorized division of the estate. As this transfer was not the act of the testator, then the estate of the testator is not liable therefor. That the executor could not make a separate and independent contract tending to bind the estate of the testator is too well established to warrant the citation of authority in support thereof.

If, therefore, as shown above, the estate of the grandchildren is not liable, for the reason that they could not assume the contractual obligation, and the estate of the testator is not liable, for the reason that the transfer to the grandchildren was not made by him and the executor had no right to make a contract binding the estate, it follows that no liability for this contingent indebtedness can be placed upon any one or more of he Defendants.

It might also be given as a reason for non-liability of the estate that during the administration of the estate by the executor no claim on the part of the depositors of the City National Bank of Sumter existed in their favor against the estate of Moses Green. All debts against the estate were duly paid, the executor was discharged without objection on the part of anyone, and we can see no reason why a claim which did not exist during the orderly administration of the estate should now be brought up years after the estate closed and liability therefor sought to be lodged against the estate of the testator. The Court always looks with favor upon the orderly administration of estates in conformity with the Statute law pertaining thereto.

It does not seem that either the act of Congress or the State Statute imposing liability on stockholders in banks is sufficient to cover the very peculiar facts existing in this case.

Before concluding this opinion it may be well to refer to some other cases which have application to the main point herein involved.

The case of Matteson v. Dent, supra, contains expressions both for and against the rule as herein expressed. The quotation from that case, above set forth, especially the italicized portion, implies quite a distinction where the stock has been actually transferred on the books of the bank. We think, however, that the controlling feature of that case was the existence of the Minnesota Statute under the terms of which liability for the stock assessment was absolutely fixed.

The case of Witters v. Sowles, 32 Fed. 130, although decided some years ago, in 1887, contains statements quite appropriate to the present case. We take from that case the following extracts:

"None of the liabilities of the bank to meet which this assessment is made, are shown or claimed to have been incurred during the life of the testator. Therefore this is not

a contingent claim for which the assets can be pursued under the laws of the state relating to such claims".

Also,

"So far as appears or is claimed, all the assets of the estate in the hands of those sought to be charged for them were received before any of the liabilities of the bank now in question were created, and most of them several years before".

[fol. 5] If it be argued that the statutory liability cannot be destroyed, that it must exist against someone, we refer to the case of Williams v. Cobb, 242 U. S. 307. In this case liability for the assessment was denied in toto under this theory of the complaint:

"The theory upon which this suit was commenced is that the transfer of the twenty shares of bank stock by Cobb and Spensley, as executors, to themselves, as trustees for Catherine Monohan, is void; that the stock is as if it had never been transferred at all and is therefore an undistributed asset of the estate of Mrs. Cobb, and that the defendant, having received as legatee and distributee much more than the amount of the assessment, is liable under the Wisconsin statute to the Receiver for the assessment, a debt of the estate, all the other assets having been distributed before the failure of the bank."

The cases of McNair v. Howle, 123 S. C. 252, and Columbia Theological Seminary v. Arnette, 168 S. C. 272, are not applicable to the present case for the reason that the debts existing in those cases were contracted prior to the death of the testator and were established as debts at the date of death.

The judgment of the Circuit Court is, therefore, reversed and the complaint dismissed under Rule 27 of this Court.

Blease, CJ., Stabler, Carter and Bonham, JJ. concur.

I, R. E. Wilder, Clerk of the Court of Common Pleas for Sumter County, South Carolina, do hereby certify that the foregoing is a true copy of the decision of the Supreme

Court of South Carolina in this case, the remittitur now being on file in my office.

I do further certify that the said opinion bears date June 26th, 1934 and that a petition for rehearing was seasonably filed with the said Supreme Court which was refused on August 13th, 1934 and the said opinion was filed as a record in my office on August 14th, 1934.

R. E. Wilder, Clerk of the Court of Common Pleas for Sumter County, South Carolina. (Seal Clerk of Court of Com. Pleas, Gen. Sessions, Sumter County, South Carolina.)

[fol. 6] STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

J. C. SEABURY, as Receiver of the City National Bank of Sumter, S. C., a National Banking Association, Respondent,

vs.

BEATRICE C. GREEN, Administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased, Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, Beatrice C. Green, as Guardian for Helen Green, Herbert Green and Allen Green, and Helen Green, Herbert Green and Allen Green, Defendants

In re: BEATRICE C. GREEN, Administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased; Beatrice C. Green as Guardian for Helen Green, Herbert Green and Allen Green, and H. W. Hennig as guardian ad Litem for Helen Green, Herbert Green and Allen Green, Appellants -

Petition for Stay

To the Honorable Eugene S. Blease, Chief Justice of the Supreme Court of South Carolina:

The petition of J. C. Seabury, as Receiver of the City National Bank of Sumter, S. C., a national banking association, respectfully shows:

1. That final judgment of the Supreme Court of South Carolina, in the above entitled cause, was rendered on the 26th day of June, 1934, by an opinion reversing the judgment of the trial Court.

2. That within due course your petitioner, through his attorney, filed a petition for a rehearing in said cause, which petition was refused on the 13th day of August, 1934 and the said opinion of the Supreme Court was immediately forwarded to the Clerk of the Court of Common Pleas for Sumter County, and is now of record in this [fol. 7] Court.

3. That the said final judgment is subject to review by the Supreme Court of the United States on Writ of Certiorari, upon the grounds that the said final judgment denies to your petitioner rights, privileges and immunities granted to him under the constitution and laws of the United States.

4. That your petitioner further presents that the cause of action herein arises solely under the Act of Congress and Acts amendatory thereto commonly known as the National Banking Laws, under which all questions of liability are finally determinable only by the Supreme Court of the United States, which has ultimate jurisdiction of questions of law and fact arising in such case.

5. That your petitioner, being the party aggrieved by the aforesaid judgment of the Supreme Court of South Carolina, desires to apply for a Writ of Certiorari from the Supreme Court of the United States, and in order to make such application and obtain such Writ it is necessary that the execution and enforcement of such judgment be stayed for a reasonable time.

6. That your petitioner further presents that the cause of action, being upon a stock liability of a National Bank, was brought under the direction of the Comptroller of the Currency of the United States, a department of the government of the United States, and that no bond is necessary under Section 28, paragraph 870 U. S. C.; Revised Statutes, paragraph 1101; 36 Statutes, 1131, 1167.

Wherefore your petitioner prays that the execution and enforcement of such judgment, rendered as aforesaid on the 26th day of June, 1934, and now filed in the office of

the Clerk of the Court for Sumter County, South Carolina, a petition for a rehearing of said cause having been refused on the 13th day of August, 1934, be stayed pursuant to the Acts of Congress in such case made and provided, and that your petitioner be allotted a period of ninety (90) days from the date of the refusal of the petition for a rehearing, in which to apply for a Writ of Certiorari from [fol. 8] the Supreme Court of the United States.

Raymon Schwartz, Attorney for J. C. Seabury, as Receiver of the City National Bank of Sumter, S. C.

September 10th, 1934.

[fol. 9] STATE OF SOUTH CAROLINA:

IN THE SUPREME COURT

J. C. SEABURY, as Receiver of the City National Bank of Sumter, S. C., a National Banking Association, Respondent,

vs.

BEATRICE C. GREEN, Administratrix D. B. N., C. T. A., of the Estate of Moses Green, Deceased; Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, Beatrice C. Green, as Guardian for Helen Green, Herbert Green and Allen Green, and Helen Green, Herbert Green and Allen Green, Defendants

In re BEATRICE C. GREEN, Administratrix D. B. N., C. T. A., of the Estate of Moses Green, deceased; Beatrice C. Green as Guardian for Helen Green, Herbert Green and Allen Green, and H. W. Hennig as Guardian ad Litem for Helen Green, Herbert Green and Allen Green, Appellants

Order Staying Execution

The plaintiff herein, J. C. Seabury, as Receiver of the City National Bank of Sumter, South Carolina, having heretofore made application for stay of execution and en-

forcement of judgment in the above entitled cause for a reasonable time in order to enable him to apply for and obtain a Writ of Certiorari from the Supreme Court of the United States,

It is ordered, That the said plaintiff have ninety days from August 13th, 1934, the date of the Order refusing a petition for rehearing, within which to apply for a Writ of Certiorari from the Supreme Court of the United States and that the remittitur and execution and enforcement of said judgment herein be stayed until final disposition of said petition for certiorari and until further order of this Court.

It is further ordered that no bond be required of the plaintiff-receiver in this cause, it appearing to the satis-
[fol. 10] faction of the Court that this suit is brought under the direction of the Comptroller of the Currency of the United States, a department of government, and that no bond is necessary as provided under title 28, paragraph 870 U. S. C.

It is further ordered that a copy of this Order be served upon the defendants in this cause, or one or more of their attorneys of record.

It is further ordered that this Order be filed in the office of the Clerk of the Court of Common Pleas for Sumter County, South Carolina.

Eugene S. Blease, Chief Justice of Supreme Court of South Carolina.

At Chambers, Newberry, S. C., September 12th, 1934.

I certify that the foregoing is a true copy — petition and order for stay, the original being filed in my office, on the 13th day of September, 1934.

R. E. Wilder, Clerk of the Court of Common Pleas for Sumter County, South Carolina. (Seal Clerk of Court Com. Pleas, Gen. Sessions, Sumter County, South Carolina.)

[fol. 11] [Endorsed:] State of South Carolina, County of Sumter. Supreme Court of the United States. J. Congdon Seabury, as Receiver, etc., Petitioner, vs. Beatrice C. Green, Administratrix D. B. N., C. T. A., of the Estate of

Moses Green, deceased, et al., Respondents. Petition for Stay and Order Staying Execution. Raymon Schwartz, Attorney-at-Law, Sumter, S. C.

[fol. 12] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1934

No. —

J. CONGDON SEABURY, as Receiver of the City National Bank of Sumter, S. C., a National Banking Association, Petitioner,

vs.

BEATRICE C. GREEN, Administratrix D. B. N., C. T. A. of the Estate of Moses Green, Deceased; Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, Beatrice C. Green, as Guardian for Helen Green, Herbert Green and Allen Green, and Helen Green, Herbert Green, and Allen Green, Respondents.

I, R. E. Wilder, Clerk of the Court of Common Pleas and General Sessions for Sumter County, a Court of record, do hereby certify that the following:

1. Complaint.
2. Answer.
3. Decree of the Honorable M. M. Mann, Judge Presiding Third Judicial Circuit.
4. Exceptions of Beatrice C. Green, administratrix D. B. N., C. T. A.
5. Exceptions of Helen Green, Herbert Green and Allen Green, by their guardian ad litem.
6. Transcript of record.

All of the foregoing being included in the case on appeal as filed with the Supreme Court of South Carolina.

7. Opinion and judgment of the Supreme Court of South Carolina made and entered the 26th day of June, 1934.
8. Petition for Writ of Certiorari.
9. Argument in support of petition for Writ of Certiorari.
10. Statement of jurisdiction of the Supreme Court of the United States.
11. Petition and Stay of execution

[fol. 13] is a true copy of the record filed in my office, the judgment of the Supreme Court being dated the 26th day of June, 1934, and petition for rehearing having been seasonably filed and the petition refused, the said judgment was duly filed in my office on the 14th day of August, 1934.

R. E. Wilder, Clerk of the Court of Common Pleas and General Sessions for Sumter County. (Seal Clerk of Court of Com. Pleas, Gen. Sessions, Sumter County, South Carolina.)

[fol. 14] [Endorsed:] State of South Carolina, County of Sumter. Supreme Court of the United States. J. Congdon Seabury, as Receiver, etc., Petitioner, vs. Beatrice C. Green, Administratrix D. B. N., C. T. A., of the Estate of Moses Green, deceased, et al., Respondents. Certificate. Raymon Schwartz, Attorney-at-Law, Sumter, S. C.

[fol. 40] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 5, 1934.

The petition herein for a writ of certiorari to the Court of Common Pleas for Sumter County, State of South Carolina, is granted, and the case is assigned for argument immediately following No. 214.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 39,062. South Carolina, Court of Common Pleas for Sumter County. Term No. 434. J. Congdon Seabury, as Receiver of the City National Bank of Sumter, S. C., Petitioner, vs. Beatrice C. Green, Administratrix, D. B. N., C. T. A., of the Estate of Moses Green, Deceased, et al. Petition for a writ of certiorari and exhibit thereto. Filed October 1, 1934. File No. 434, O. T., 1934.

(5622-C)